

October 31, 1935

Mr. D. B. Hutchins, Superintendent
Motor Vehicle Division
Arizona Highway Department
Phoenix, Arizona

Dear Sir:

In accordance with instructions of the Highway Commission, I have heretofore returned the draft of the Maryland Casualty Company to Mr. Herman Lewkowitz with the statement we could not accept the draft in that amount as payment in full, for the reason that, in our opinion, we were entitled to the penalty of twenty five per cent in addition thereto.

At the meeting of the Highway Commission at that time, the Chairman asked me what effect or bearing it would have on other bonds written by that same company. In answer to which question, I read from Section 1673b, Revised Code of Arizona Supplement 1934, which I now call to your attention.

You will notice that said Section provides in part as follows to-wit:

" ** If in the opinion of said superintendent any surety on the bond theretofore given shall have become unsatisfactory or unacceptable, then said superintendent may require the distributor to file a new bond or bonds, with satisfactory sureties in the same amount, failing which said superintendent shall forthwith cancel the license certificate of said distributor **".

In the paragraph immediately following the above quotation, you will find the following language used to-wit:

" ** With a surety company thereon approved by said superintendent, ** ".

While in the succeeding paragraph of said Section, you will find the following language used to-wit:

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" ** With a surety company satisfactory
to said superintendent **".

As stated to the Commission at that time, if in your opinion, the fact that we have to bring a law suit against this particular company to recover what we claim is due under the bond, makes this surety company unsatisfactory and unacceptable to you, I think you would be justified in proceeding according to said Section above quoted from.

Yours very truly,

JOHN L. SULLIVAN
Attorney General


A. I. WINSETT
Assistant Attorney General
Special Counsel
Arizona Highway Department

AIW:cp
cc Mr. T. S. O'Connell